

AMENDED IN ASSEMBLY APRIL 7, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 439

Introduced by Assembly Member Skinner

February 14, 2011

An act ~~relating to public health~~ to amend Section 56.36 of the Civil Code, relating to health care information.

LEGISLATIVE COUNSEL'S DIGEST

AB 439, as amended, Skinner. Health care information.

Existing law, the Confidentiality of Medical Information Act (CMIA), prohibits a health care provider, a contractor, or a health care service plan from disclosing medical information, as defined, regarding a patient of the provider or an enrollee or subscriber of the health care service plan without first obtaining an authorization, except as specified. *In addition to other remedies available, existing law authorizes an individual to bring an action against any person or entity who has negligently released his or her confidential records in violation of those provisions for nominal damages of \$1,000.*

~~This bill would declare the intent of the Legislature to enact legislation that would continue to protect patient privacy, remove barriers to the necessary exchange of health information, and encourage the appropriate exchange of health care information between providers, plans, and other business associates specify that nominal damages may be awarded at the discretion of the court.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 56.36 of the Civil Code is amended to*
2 *read:*

3 56.36. (a) Any violation of the provisions of this part that
4 results in economic loss or personal injury to a patient is punishable
5 as a misdemeanor.

6 (b) In addition to any other remedies available at law, any
7 individual may bring an action against any person or entity who
8 has negligently released confidential information or records
9 concerning him or her in violation of this part, for either or both
10 of the following:

11 (1) Nominal damages of one thousand dollars (\$1,000), *which*
12 *may be awarded at the discretion of the court.* In order to recover
13 under this paragraph, it shall not be necessary that the plaintiff
14 suffered or was threatened with actual damages.

15 (2) The amount of actual damages, if any, sustained by the
16 patient.

17 (c) (1) In addition, any person or entity that negligently
18 discloses medical information in violation of the provisions of this
19 part shall also be liable, irrespective of the amount of damages
20 suffered by the patient as a result of that violation, for an
21 administrative fine or civil penalty not to exceed two thousand
22 five hundred dollars (\$2,500) per violation.

23 (2) (A) Any person or entity, other than a licensed health care
24 professional, who knowingly and willfully obtains, discloses, or
25 uses medical information in violation of this part shall be liable
26 for an administrative fine or civil penalty not to exceed twenty-five
27 thousand dollars (\$25,000) per violation.

28 (B) Any licensed health care professional, who knowingly and
29 willfully obtains, discloses, or uses medical information in violation
30 of this part shall be liable on a first violation, for an administrative
31 fine or civil penalty not to exceed two thousand five hundred
32 dollars (\$2,500) per violation, or on a second violation for an
33 administrative fine or civil penalty not to exceed ten thousand
34 dollars (\$10,000) per violation, or on a third and subsequent
35 violation for an administrative fine or civil penalty not to exceed
36 twenty-five thousand dollars (\$25,000) per violation. Nothing in
37 this subdivision shall be construed to limit the liability of a health
38 care service plan, a contractor, or a provider of health care that is

1 not a licensed health care professional for any violation of this
2 part.

3 (3) (A) Any person or entity, other than a licensed health care
4 professional, who knowingly or willfully obtains or uses medical
5 information in violation of this part for the purpose of financial
6 gain shall be liable for an administrative fine or civil penalty not
7 to exceed two hundred fifty thousand dollars (\$250,000) per
8 violation and shall also be subject to disgorgement of any proceeds
9 or other consideration obtained as a result of the violation.

10 (B) Any licensed health care professional, who knowingly and
11 willfully obtains, discloses, or uses medical information in violation
12 of this part for financial gain shall be liable on a first violation, for
13 an administrative fine or civil penalty not to exceed five thousand
14 dollars (\$5,000) per violation, or on a second violation for an
15 administrative fine or civil penalty not to exceed twenty-five
16 thousand dollars (\$25,000) per violation, or on a third and
17 subsequent violation for an administrative fine or civil penalty not
18 to exceed two hundred fifty thousand dollars (\$250,000) per
19 violation and shall also be subject to disgorgement of any proceeds
20 or other consideration obtained as a result of the violation. Nothing
21 in this subdivision shall be construed to limit the liability of a
22 health care service plan, a contractor, or a provider of health care
23 that is not a licensed health care professional for any violation of
24 this part.

25 (4) Nothing in this subdivision shall be construed as authorizing
26 an administrative fine or civil penalty under both paragraphs (2)
27 and (3) for the same violation.

28 (5) Any person or entity who is not permitted to receive medical
29 information pursuant to this part and who knowingly and willfully
30 obtains, discloses, or uses medical information without written
31 authorization from the patient shall be liable for a civil penalty not
32 to exceed two hundred fifty thousand dollars (\$250,000) per
33 violation.

34 (d) In assessing the amount of an administrative fine or civil
35 penalty pursuant to subdivision (c), the Office of Health
36 Information Integrity, licensing agency, or certifying board or
37 court shall consider any one or more of the relevant circumstances
38 presented by any of the parties to the case including, but not limited
39 to, the following:

- 1 (1) Whether the defendant has made a reasonable, good faith
- 2 attempt to comply with this part.
- 3 (2) The nature and seriousness of the misconduct.
- 4 (3) The harm to the patient, enrollee, or subscriber.
- 5 (4) The number of violations.
- 6 (5) The persistence of the misconduct.
- 7 (6) The length of time over which the misconduct occurred.
- 8 (7) The willfulness of the defendant's misconduct.
- 9 (8) The defendant's assets, liabilities, and net worth.
- 10 (e) (1) The civil penalty pursuant to subdivision (c) shall be
- 11 assessed and recovered in a civil action brought in the name of the
- 12 people of the State of California in any court of competent
- 13 jurisdiction by any of the following:
- 14 (A) The Attorney General.
- 15 (B) Any district attorney.
- 16 (C) Any county counsel authorized by agreement with the
- 17 district attorney in actions involving violation of a county
- 18 ordinance.
- 19 (D) Any city attorney of a city.
- 20 (E) Any city attorney of a city and county having a population
- 21 in excess of 750,000, with the consent of the district attorney.
- 22 (F) A city prosecutor in any city having a full-time city
- 23 prosecutor or, with the consent of the district attorney, by a city
- 24 attorney in any city and county.
- 25 (G) The Director of the Office of Health Information Integrity
- 26 may recommend that any person described in subparagraphs (A)
- 27 to (F), inclusive, bring a civil action under this section.
- 28 (2) If the action is brought by the Attorney General, one-half
- 29 of the penalty collected shall be paid to the treasurer of the county
- 30 in which the judgment was entered, and one-half to the General
- 31 Fund. If the action is brought by a district attorney or county
- 32 counsel, the penalty collected shall be paid to the treasurer of the
- 33 county in which the judgment was entered. Except as provided in
- 34 paragraph (3), if the action is brought by a city attorney or city
- 35 prosecutor, one-half of the penalty collected shall be paid to the
- 36 treasurer of the city in which the judgment was entered and one-half
- 37 to the treasurer of the county in which the judgment was entered.
- 38 (3) If the action is brought by a city attorney of a city and
- 39 county, the entire amount of the penalty collected shall be paid to

1 the treasurer of the city and county in which the judgment was
2 entered.

3 (4) Nothing in this section shall be construed as authorizing
4 both an administrative fine and civil penalty for the same violation.

5 (5) Imposition of a fine or penalty provided for in this section
6 shall not preclude imposition of any other sanctions or remedies
7 authorized by law.

8 (6) Administrative fines or penalties issued pursuant to Section
9 1280.15 of the Health and Safety Code shall offset any other
10 administrative fine or civil penalty imposed under this section for
11 the same violation.

12 (f) For purposes of this section, “knowing” and “willful” shall
13 have the same meanings as in Section 7 of the Penal Code.

14 (g) No person who discloses protected medical information in
15 accordance with the provisions of this part shall be subject to the
16 penalty provisions of this part.

17 (h) Paragraph (6) of subdivision (e) shall only become operative
18 if Senate Bill 541 of the 2007–08 Regular Session is enacted and
19 becomes effective on or before January 1, 2009.

20 ~~SECTION 1. The Legislature finds and declares all of the~~
21 ~~following:~~

22 ~~(a) Quality and affordable health care is hugely dependent on~~
23 ~~the appropriate exchange of health care information. This includes~~
24 ~~the exchange of protected health information between providers,~~
25 ~~plans, and other business associates.~~

26 ~~(b) Federal and state laws, including the Confidentiality of~~
27 ~~Medical Information Act (CMIA), provided for in Part 2.6~~
28 ~~(commencing with Section 56) of Division 1 of the Civil Code,~~
29 ~~regulate the flow of confidential medical information through the~~
30 ~~spectrum of care delivery and payment. The CMIA established~~
31 ~~the framework in this state for protecting personal medical~~
32 ~~information.~~

33 ~~(c) Ensuring the quality and efficacy of health care delivery~~
34 ~~requires continued modernization; moving toward the electronic~~
35 ~~exchange of health information.~~

36 ~~(d) It is the intent of the Legislature to enact legislation that~~
37 ~~would do all of the following:~~

38 ~~(1) Continue to protect patient privacy.~~

39 ~~(2) Remove barriers to the necessary exchange of health~~
40 ~~information.~~

- 1 ~~(3) Encourage the appropriate exchange of health care~~
- 2 ~~information between providers, plans, and other business~~
- 3 ~~associates.~~

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